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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

RIN 0648-XD287

Fisheries of the Exclusive Economic Zone Off Alaska; Skates Management in the Bering Sea and Aleutian Islands Management Area; Habitat Areas of Particular Concern

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of Agency decision.

SUMMARY: The National Marine Fisheries Service (NMFS) announces the approval of Amendment 104 to the Fishery Management Plan for Groundfish of the Bering Sea and Aleutian Islands Management Area (FMP). Amendment 104 to the FMP designates six areas of skate egg concentration as Habitat Areas of Particular Concern (HAPC). The HAPC designations for the six areas of skate egg concentration in the Bering Sea and Aleutian Islands Management Area (BSAI) are intended to highlight the importance of this essential fish habitat for conservation. This action promotes the goals and objectives of the Magnuson-Stevens Fishery Conservation and Management Act, the FMP, and other applicable laws.

DATES: The amendment was approved on January 5, 2015.

ADDRESSES: Electronic copies of Amendment 104 to the FMP and the Environmental Assessment (EA) prepared for this action are available from the Alaska Region NMFS website at <http://www.alaskafisheries.noaa.gov/analyses/default.htm>.

FOR FURTHER INFORMATION CONTACT: Seanbob Kelly, 907-271-5195.

SUPPLEMENTARY INFORMATION: The Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) requires that each regional fishery management council submit proposed amendments to a fishery management plan to NMFS for review and approval, disapproval, or partial approval by the Secretary of Commerce (Secretary). The Magnuson-Stevens Act also requires that, upon receiving a fishery management plan amendment, NMFS immediately publish in the Federal Register a notice that the amendment is available for public review and comment.

The Notice of Availability for Amendment 104 was published in the Federal Register on October 8, 2014 (79 FR 60802), with a 60-day comment period that ended on December 8, 2014. NMFS received three comment letters that contained five substantive comments during the public comment period on the Notice of Availability for Amendment 104. No changes were made in response to these comments. NMFS summarized and responded to these comments under Comment and Responses, below.

NMFS determined that Amendment 104 to the FMP is consistent with the Magnuson-Stevens Act and other applicable laws, and the Secretary approved Amendment 104 on January 5, 2015. The October 8, 2014, Notice of Availability contains additional information on this action. No changes to Federal regulations are necessary to implement Amendment 104.

HAPC are geographic sites that fall within the distribution of essential fish habitat (EFH) for federally-managed species. HAPC are areas of special importance that may require additional protection from the adverse effects of fishing. EFH provisions provide a means for the Council to identify HAPC (50 CFR 600.815(a)(8)) in fishery management plans based on the rarity of the habitat type and at least one or more of the following considerations: the importance of the ecological function provided by the habitat; the extent to which the habitat is sensitive to

human-induced environmental disturbance or degradation; and whether, and to what extent, development activities are, or will be, stressing the habitat type. The designation of HAPC does not require the implementation of regulations to limit fishing within HAPC unless such measures are determined to be necessary. EFH provisions require that a Council and NMFS act to prevent, mitigate, or minimize any adverse effects from fishing, to the extent practicable, if there is evidence that a fishing activity adversely affects EFH in a manner that is more than minimal and not temporary in nature (50 CFR 600.815(a)(2)(ii)). Because HAPC is a type of EFH, these regulatory provisions also apply to HAPC.

Amendment 104 to the FMP was unanimously adopted by the Council in February 2013. Amendment 104 designates as HAPC six areas in the eastern Bering Sea where relatively high concentrations of skate eggs occur for several skate species (family Rajidae). Amendment 104 amends 1) Section 4.2.3.2 of the FMP to add six areas of skate egg concentration as HAPC, and 2) Appendix B of the FMP to include coordinates and maps that designate these HAPC. Amendment 104 adds Section 3.5.2.4.2 to the FMP to note that fishing activities are not restricted within these HAPC.

The Council and NMFS determined that these six areas met the definition of HAPC because they are rare and provide an important ecological function. These areas encompass approximately 82 square nautical miles of habitat, or less than 0.1 percent of the total area of the BSAI. These areas are discrete sites near the shelf/slope break with unique abiotic features (e.g., substrate composition) that serve as important spawning and embryonic development areas for skate species. At each of these six areas, scientists repeatedly observed a relatively high occurrence of skate egg cases during stock assessment surveys and from fishery observer samples collected from vessels deploying fishing gear that contacted the sea floor (e.g., non-

pelagic trawl gear). The best available scientific information does not indicate that human-induced degradation (e.g., adverse effects from fishing or non-fishing) is occurring. Because human-induced degradation from fishing or other activities is not observed currently, the Council did not consider this HAPC designation criterion as having been met.

The Council recommended Amendment 104 to the FMP to designate the six areas of skate egg concentrations that meet the Council's HAPC criteria. The Council also determined that designating these areas as HAPC would provide additional focus for the review of and consultation on proposed and existing activities (e.g., drilling, laying cables, seismic exploration, fishing) within these HAPC.

An EA was prepared for Amendment 104 that describes the six areas of skate egg concentration, the fishery management background, the purpose and need for the action, the management alternatives evaluated to address this action, and the environmental, social, and economic impacts of the alternatives (see ADDRESSES).

#### Comments and Responses

During the public comment period for the Notice of Availability for Amendment 104, NMFS received three comment letters from three unique members of the public that contained five substantive comments. No changes to the amendment text were needed in response to the public comments. NMFS' responses to these comments are presented below.

Comment 1: One commenter expressed support for this action.

Response: NMFS acknowledges this comment.

Comment 2: One commenter expressed a general discontent with fisheries management.

Response: NMFS acknowledges this comment and notes that it is outside of the scope of Amendment 104.

Comment 3: Fishing should be banned in the six HAPC because NMFS is unable to prevent fishermen from exceeding allocations or illegally participating in the groundfish fisheries.

Response: NMFS disagrees. Before adopting Amendment 104, the Council considered an alternative (Alternative 3) that would have limited fishing within the proposed HAPC. The Council did not recommend regulations to limit fishing as part of this action because there is no evidence of adverse effects from fishing on skate populations within these HAPC that would need to be addressed through regulation. For example, the types of fishing gear used in the six HAPC have a minimal and temporary impact on skate habitat, and fishing effort is limited or does not occur in four of the six HAPC. Therefore, continued commercial fishing at the current rate and intensity is not likely to alter the capacity of EFH within these HAPC to support healthy populations of skates over the long term, as noted in Section 3.5.2 of the EA prepared for this action (See ADDRESSES). No new information exists that indicates that fishing activities are adversely affecting skate egg deposition and embryonic development within these HAPC.

NMFS will continue monitoring fishing activities within these six HAPC. NMFS monitors these HAPC by analyzing data collected through existing data sources such as stock assessment surveys and fishery observers. This monitoring will inform the Council and NMFS when there are major changes in fishing effort or other potential impacts to skate habitat within these HAPC. If through monitoring, NMFS and the Council learn that skate recruitment or overall biomass of a skate species has changed due to fishing impacts within these HAPC, the Council could recommend and NMFS could implement action to restrict fishing activities within these HAPC to protect the skate stocks dependent on the six HAPC established by this action.

Comment 4: Skates are important to the marine ecosystem. The six HAPC must be monitored for non-fishing impacts like abiotic changes in the environment.

Response: NMFS agrees. As noted in the response to comment 3, NMFS will continue to monitor the utility of these sites for skate spawning and embryonic development. This includes further study of the relationship between the biotic and abiotic habitat features of the sites and site selection for skate egg deposition. Incorporating the research and monitoring of skate species into the Council's annual research priority list will provide additional research focus on these HAPC. This research is intended to improve the understanding of skate populations, the importance of areas of skate egg concentration, and skate ecology and habitat.

Comment 5: The commonly accepted scientific term used for the HAPC areas designated under Amendment 104 is "skate nurseries." We recommend that NMFS clarify that the "areas of skate egg concentrations" designated as HAPC are equivalent to "skate nursery" sites

Response: NMFS agrees and notes that Section 2.4.4 of the EA prepared for this action (See ADDRESSES) acknowledges that the term "areas of skate egg concentrations" is synonymous with the term "skate nurseries".

Authority: 16 U.S.C. 1801 et seq.

Dated: January 5, 2015.

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Eileen Sobeck,

Assistant Administrator for Fisheries,

National Marine Fisheries Service.

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